S. hrg. 99-431

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SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1818

A BILL TO PREVENT THE SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY

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SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY—S. 1818

TUESDAY, NOVEMBER 19, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-385, Russell Senate Office Building, Hon. Jeremiah Denton (acting chairman) presiding.

Also present: Senator McConnell.

Staff present: Richard D. Holcomb and Frances R. Wermuth (Senator Denton), and Chris Reynolds (Senator McConnell).

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good morning, ladies and gentlemen. The hearing will come to order.

This hearing and its subject matter are related to a need to address two issues. First, the large discrepancy in the manner in which laws address child molestation by Indian adults versus Indian children on Indian lands, and, second, a reported increase in child molestation on Indian lands.

The committee is meeting today to receive testimony on S. 1818, a bill which would resolve that discrepancy, a bill to prevent the sexual molestation of children in Indian country.

As a sponsor of the bill, along with my distinguished colleague and friend, Senator DeConcini, I have been given the privilege of chairing the hearing.

The witnesses today include the Honorable Lois Haight Herrington, Assistant Attorney General, Office of Justice Assistance, U.S. Department of Justice, who is here, and Miss Suzan Shown Harjo, executive director, National Congress of American Indians, whom we expect momentarily.

Before I call on our first witness, let me summarize, briefly, the overall policy behind S. 1818. As I said, it is designed to fill a gap in the Major Crimes Act, 18 U.S.C. 1153, with regard to serious sexual conduct directed at children.

Currently, section 1153 reaches the crimes of rape, involuntary sodomy, and carnal knowledge of a female under the age of 16, when those crimes are committed by an Indian in Indian country.

Although recently amended by Public Law 98-473 to add the offense of involuntary sodomy, the statute still lacks adequate coverage of nonforcible sexual conduct committed by an adult on children. Serious offenses that are not now covered include various

types of adult sexual contact with male or female children, other than carnal knowledge.

Many U.S. attorneys have reported a troubling increase in incidents on Indian reservations. Amendment of the Major Crimes Act is necessary to permit effective enforcement, since without the amendment, these serious offenses which nearly all States treat as felonies, are prosecutable only in a tribal court, which may now administer a maximum punishment of up to only 6 months imprisonment and/or a fine of up to $500, according to 25 U.S.C. 1302(7).

Moreover, amendment of the Major Crimes Act is necessary to increase the protection of children on Indian reservations and to render more similar the punishment for such crimes between Indian and non-Indian offenders. A non-Indian who commits the crime of sexual molestation of a minor in Indian country is punishable under the far more stringent provisions of State law, either in State court when the victim is a non-Indian, or in Federal court by assimilation under 18 U.S.C. 1152, when the victim is an Indian.

The bill adds the offense of, "felonious sexual molestation of a minor," to section 1153, thus permitting State law to be used in Federal court to prosecute Indians, as well as non-Indian sexual molesters of children in Indian country.

The description of the offense as "sexual molestation of a minor" is, like the recent addition of "involuntary sodomy," which was meant to be generic in nature. Thus, it would not matter whether the particular State denominated its offense as sexual molestation, or by some other title as indecent liberties or sexual contact with children. So long as the State has on its books a felony offense that proscribes the conduct of nonforcible sexual abuse on the person of a minor, also as defined by State law, that offense will be incorporated into section 1153.

The offense must, however, be a felony. This qualification ensures, that as, with all other offenses in section 1153, only the major varieties of the offense will be subject to Federal jurisdiction, maintaining exclusive tribal jurisdiction over the lesser offenses.

As the U.S. Supreme Court noted in the famous case of *New York* v. *Ferber*: "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."

It is with that objective in mind that Senator DeConcini and I introduced this bill to prevent the sexual molestation of children in Indian country.

At this time I would like to take the opportunity to place in the record statements by Senators DeConcini and McConnell as well as a copy of a letter from the Bureau of Indian Affairs endorsing the bill; a copy of a letter from the Alabama Indian Affairs Commission endorsing the bill; and written testimony from the Fort Peck Tribal Executive Board of Montana.

[The aforementioned material follows:]

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman, I am very pleased that the full Committee was able to schedule a hearing on this legislation so quickly. I believe it reflects the importance that the Committee puts on the protection of our children.

I am happy to see that the Administration and the National Congress of American Indians are here today to offer testimony in support of S. 1818. I am hopeful that this mutual support will enable the Committee to act quickly and report this legislation with a strong recommendation that the Senate approve it.

S. 1818 amends the Major Crimes Act, Section 1153 of Title 18 of the United States Code. Section 1153 currently covers the crimes of rape, involuntary sodomy (added in last year's crime bill) and carnal knowledge of a female under the age of 16 when those crimes are committed by an Indian in Indian country. The statute lacks adequate coverage of non-forcible sexual conduct involving children.

Many U.S. attorneys have reported a troubling increase in sexual molestation of children cases on Indian reservations. Without this legislation these serious offenses, which nearly all States treat as felonies, are prosecutable only in tribal courts which may administer punishment only up to six months by Federal law. A non-Indian who commits the crime of sexual molestation on an Indian reservation is subject to the far more stringent provisions of State law.

The bill defines "felonious sexual molestation of a minor" according to the definition of the State in which the reservation is situated. Thus, the bill allows Federal courts to prosecute Indian as well as non-Indian sexual molesters of children. Penalties and sentences for the offense would be those prescribed by the State.

Mr. Chairman, I am pleased to join with you as sponsor of this bill. I congratulate you for your concern for the children of this nation and especially for our Indian population. I will assist you in every way possible to achieve quick enactment of this legislation.

PREPARED STATEMENT BY SENATOR MITCH MCCONNELL

Mr. Chairman: I wish to thank you for introducing S. 1818. This bill to prevent the sexual molestation of Indian children will correct a serious oversight by the Federal Government by providing the maximum protection for Indian children. As I am sure you are aware, Mr. Chairman, I believe that child sexual abuse is a reprehensible crime deserving serious punishment.

Children become vulnerable to abuse when, through their own action or the action of others, they leave the protection of their parents. In recent years, however, we have become aware of the extent of child molestation within families. This is a terrible secret hidden in many American homes and I feel we do not yet know the full effects of this crime upon its victims. But whether a child is molested within or outside of the family, children need the protection of the law and, accordingly, perpetrators of this crime deserve punishment.

S. 1818 endeavors to equalize the punishment for the sexual molestation of children between Indian and non-Indian offenders. I commend the National Congress of American Indians for bringing this issue to our attention and I thank the witnesses for their testimony here today.

ALABAMA INDIAN AFFAIRS COMMISSION

339 DEXTER REESE BLDG. SUITE 113
MONTGOMERY, ALABAMA 36104
(205) 261-3831

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Senator Jeremiah Denton
United States Senate - Alabama
516 Hart Building
Washington, D.C. 20510

RE: S. 1818

Dear Senator Denton:

On behalf of the Alabama Indian Affairs Commission, please accept this letter of appreciation for your sponsorship of the above cited bill. As we have conveyed to you by telephone and letter, the plight of Indian children anywhere in the United States concerns all the Indian people of the nation. We are indeed pleased that you have shown your support of our needs and concerns.

Your aid, Rick Holcomb, has apprised us that the bill today passed the Judiciary Committee unaminously. We are gratified to hear this, and are assured that Senator Howell Heflin will be signing on this important legislation also.

Again, our appreciation to you for your help and perseverance in this important matter.

Yours very truly,

Jane L. Weeks
Executive Director

JLW/vl

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 10 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for our views on S. 1818, a bill "To prevent the sexual molestation of children in Indian country."

We strongly support enactment of S. 1818.

S. 1818 would amend the so-called Indian Major Crimes Act (18 U.S.C. 1153) by adding the offense of "felonious sexual molestation of a minor" to the list of offenses under that Act. Despite recent amendment, a gap remains in the Act with respect to serious acts of sexual abuse of minors that do not involve carnal knowledge. The Act also lacks adequate coverage of nonforcible sexual conduct involving children.

We concur with the position presented by the Department of Justice at the hearing before your Committee on November 19, 1985, and urge prompt and favorable consideration of this bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer

ASSISTANT SECRETARY

PREPARED STATEMENT OF IVA TROTTIER

My name is Iva Trottier, Mental Health Specialist for United States Indian Health Service on the Fort Peck Indian Reservation, I am an enrolled Fort Peck Assiniboine and am also LacCourt O'Reille Ojibway and Pillager Band Ojibway. I have worked on two Montana Indian Reservations for the Indian Health Service for almost six years in the Mental Health field.

In sexual abuse cases Mental Health is involved in working with the victims, perpetrators, and non-offending parents. We appear in court to testify. We assist in interviews for legal action. We sometimes provide emotional support to children throughout medical examinations. We most importantly help to rebuild these often times shattered children.

Because of working in a medical setting we see the children with venereal diseases, torn vaginal openings, prolapsed rectums, and we know beyond a reasonable doubt they have been assaulted. It is not easy helping these children, such as those who are immobilized when a man touches them, even in a friendly gesture, or worse those who do not even move if a man is in the same room. It is difficult to intervene in the emergency room when a three year old is crying to their grandma, "I can't sit down, it hurts to sit down," or when a child barely taller than my desk describes being forced into oral sex, (which resulted in venereal disease in the throat), when a six year old shows how a sock was stuffed in her mouth and her arms were held behind her back when she was sodomized. We have many grave problems such as the person who has multiple victims that he makes strip then line up and then drink his urine and lick up feces then rapes them one at a time - while each watches not knowing who is next. The oldest of the victims is a very small under-developed Fetal Alcohol Syndrome child who is thirteen years old but appears to be eight or nine. These are actual cases on our Reservation.

To increase our frustration our own Court does not address the sexual abuse of children seriously, because of the lack of specificity of the law and the inadequacy of the maximum allowable penalty under the Indian Civil Rights Act and close familial relationships between offenders and court personnel.

Our laws presently do not cover child molestation adequately in either the Federal Court or Tribal Court systems.

> Sodomy does not include female victims.
> Carnal knowledge does not include oral copulation.
> Incest does not include assaults by aunts, uncles, or cousins.
> We have no clear definitions of law to cover instrument rape, bestiality, urophilia, coprophilia, child pornography, or exhibitionism.

Please be aware though we do not have laws to clearly cover these crimes on the Reservation. We do have the above mentioned crimes and most of our victims are under the age of ten. We need your help to change the present situation.

We asked that our Courts be allowed to increase the penalty for Child Sexual Abuse from six months and/or $500. and we were told it could not be done as though we were foolish women.

This bill has given us hope.

We need fair unbiased judges to hear our cases and to weigh all the facts of each case to assure justice and we strongly support expanding the laws covering child molestation.

We appreciate your attention to our situation. We ask your help to protect our children. Please listen to the pleas of the children and take pity on them.

PREPARED STATEMENT OF CAROLYN RUSCHE

My name is Carolyn Rusche. I am an Assiniboine Indian and a member of the Fort Peck Tribe of Montana. I am very concerned about the Child Abuse, physical, mentally and sexual problem on our reservation. Myself and other concerned citizens formed a group called "Voices For Children" hoping to help find solutions for this major problem. Child Abuse is Nation wide, but here on the reservation Children are deprived of rights that a non-Indian child would have. It appears that they don't have any rights. When a Child Abuse case is reported it is more than likely that nothing will be done to the Perpetrator. People here feel "why report a case all he'll get is a slap on the hand, if even that." The only case to my knowledge that has gone to trial, were two brothers that molested 4 children between them. They were both found guilty one on 3 counts of Sodomy and on the other 1 count of rape. But they have not served one day in jail. Somehow the transcripts of the trial have been erased!

The Statue of Limitations for Tribal Law is 1 year, which most cases expire before going to trial. And we hear cases that were set but overruled by another Judge. We have been told that a child under the age of five is considered an unreliable witness. Most cases of Child Molestation is under the age of ten. Yet no one is willing to speak up in their behalf. Children are being yanked from their homes and put into Foster care. Not all these children have the privilege of getting counseling after going through horrifying incidences. And the Foster Parents may not have been told the problem that the child has gone through.

"Voices For Children" has members that are Indian, non-Indian, Professional Citizens and mainly concerned Parents that feel that 6 months maximum sentence and or $500,00 fine is inadequate for such a severe crime! This crime of Child Molestation does far more damage, than any other crime. The trama and emotional disturbances caused to a child is unmeasurable. There is no way that an 18 month old can sexually arouse an offender on purpose. Nor does any Child ask to be abused. The Offender is to blame and needs to be punished.

We are trying to help with Public Awareness, but have been told it will take an Act of Congress to change our laws. We would like our Tribal Law changed from six months to at least 1 year and the fine from $500.00 to at least $1,000.00.

For the sake of my children, for my friends children and our future generation. I come to you Honorable Senators and ask for myself and the members of "Voices For Children" that you Pass this Bill.

It took ten months of pressure to get our Court to take action on two child sexual abuse cases. This action came only after the community began pressuring them.

There is clearly different treatment in our Tribal Court system, if one is related to Court personnel. We've noted interference with investigations.

Appeal transcripts were erased on two cases involving the sexual abuse of four children and those appeals were not in writing citing a point of law, yet these men are still walking on the streets, free, after being found guilty six months ago.

Multiple testimony given by sexual abuse victims ages 6, 7, & 11, in proceedings lasting from 8:30 a.m. to 5:00 p.m. was heard; then the judge disqualified herself, because she was related to one of the victims. The victims then had to repeat their testimony again for a new judge.

There is nothing in the Tribal Code for adolsescent sexual offenders so they are charged with disorderly conduct, such as the fifteen year old who violently raped a four year old girl.

One judge's decision on sentencing is overruled by another judge so the perpetrator did not complete his sentence of spending weekends in jail as originally ordered. This perpetrator then smug, urged his wife to petition the juvenile court to get custody of their daughter back.

Three adult judges are not getting training in how to deal with child sexual abuse cases, though it is available to them. This indicates how they prioritize child sexual abuse, and this concerns those of us who work with the victims.

FORT PECK TRIBAL EXECUTIVE BOARD
P. O. Box 1027 Poplar, MT 59255
ASSINIBOINE & SIOUX TRIBES

TESTIMONY OF JONNY BEARCUB STIFFARM

November 18, 1985

Honorable Senators and . . . .;

My name is Hunga Waste Wea, Good Chief Woman. My English name is Jonny Bearcub Stiffarm. I am from the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation in Montana. I speak on behalf of the members of these two great tribes voice the concern we feel over this henious crime of sexual abuse of our most precious possession - our children. In our past, we as tribal societies of the Plains, had rigid codes of conduct for our peoples to follow. If they violated the code, we punished them according to tribal law. Today, we live in a new world, your world, where the majority rules by imposing their systems of justice upon us. Our traditional way of life has been changing very rapidly these past 200 years. This great nation, the United States, has brought to our tribes many good things that have improved our lives. But with these you have also introduced many bad things into our society that has caused the disintegration of our value systems, a most disturbing collapse of our kinship structures, and a loss of pride and honor of mortal man. It is a miracle that we still exist and function as tribes. We pray that our future generations will exist and function as tribes. And carry our tribal names into history so that we will not become extinct to be voices crying on an evening wind. Only you in your passage of this bill can begin to help us help our children and our tribes to survive. Sexual abuse, oral copulation, beastiality, incest, are words that describe a very controversial and troubling topic that has raised its' ugly head in Indian country. By wanting to believe that we, the noble red man, as some describe us, could be capable committing these acts with children under the age of ten brings a shiver of disgust to many, but if the offender happens to be a distant member of your family, then it seems to be best to turn your head and pretend it did not happen rather theh bring dishonor to the family within the tribe. A tribe is a family, but this family is troubled. The State of Montana has 1,200 youth placed in foster care. The Fort Peck Indian Reservation in Montana has 437 of their youth in foster care. Over a 2 year period, our Indian Health Service has had 100 child sexual abuse cases. Upon going

to court, only 10 were able to be addressed as actual cases with enough physical evidence presented to hold it in court. Out of these, 6 went on into Federal Court because they fell into the right guidelines of some other major crime not directly related to sexual abuse. The other cases lost between the cracks that exist legally and before tribal courts not adequately trained or physically, mentally prepared to deal with this crime involving children, the majority under 10 years old who could tell you of things done to them physically through oral copulation, fondling, the forcing of them to drink urine or eat feces, or have them describe an adult male or female's anatomy in great detail. These children have more knowledge than a normal child their age should possess. We know a crime has been committed, but we cannot punish if we do not have the physical evidence of penetration before the court. Our hands are tied by non-existing laws within our tribal codes, and by restricted federal laws. An example of this problem is incest. In the kinship system of our tribes, a child can have many fathers or many mothers. Our definition of an uncle or aunt is very different from yours. The crime of incest in Indian country needs to address the issue of the extended family definition. Another major problem is within our courts themselves, a judge who is related to the people involved in the case may pass a ore lenient sentence upon the offender and a more harsh one upon another who has committed the same type of crime upon someone else. One judge may overrule another judge, causing discrepancies and putting the welfare of the victim in jeopardy. Or, the judge might refuse to hear the case as all leaving no recourse in sight. We desparately need training for our tribal courts in these matters and also for the U.S. attorneys to deal with these cases. The adolsecent offender is another sore eye of our tribal judicial system in regards to sexual abuse. Today he can only be charged in tribal court with disorderly conduct if he repes a four year old child or sodomizes one. We Native Americans are citizens of the United States, citizens of our individual tribes that hold a form of limited sovereignty, and wards of this government. We urge you to grant to our children the same protection you now grant the non-Indian child. We ask that in the wording of this bill, you take into consideration the many facets of our varied cultures, definitions of family, and make the price of committing this form of crime on that is high enough to begin to provide the deterent so needed in Indian country.

Tommy Stiffarm
Stiffarm

Voices For Children

Constitution and By-Laws

JUNE 1985

VOICES FOR CHILDREN
CONSTITUTION And

Article I - Name of Organization

The name of the organization shall be "VOICE FOR CHILDREN." The organization will be located on the Fort Peck Reservation and its home base will be in the town of Wolf Point.

Article II - Purposes

VOICES FOR CHILDREN will be formed for the express purpose of providing a formal structure to disseminate factual child sexual abuse and neglect information to the general public — reservation-wide.

The VOICES FOR CHILDREN membership shall, at all times, strive to be an advocacy organization for the rights of children, regardless of their race, creed, or national origin.

VOICES FOR CHILDREN shall also cooperate with tribal, state, and federal governments; and institutions, groups, programs, and agencies for promoting quality information, prevention, intervention, statistics, and educational seminars and workshops.

VOICES FOR CHILDREN shall strategically and officially document all occurences concerning court cases involving children and provide follow-up documentation as needed to disseminate information.

VOICES FOR CHILDREN shall provide periodic workshops and seminars to educate and establish public awareness to the community and the local educational institutions and their staff.

VOICES FOR CHILDREN will help to insure that the victim is given the right of due process of law and that truly is "Justice for All" through whatever system (Federal, Tribal, State) exists for him/her.

BY-LAWS

Section I. General Membership. Any person interested in helping VOICES FOR CHILDREN attain their goals is eligible.

Section 2. Terms of Office. The terms of the officer shall be staggered for the purpose of maintaining continuity. Beginning in June, 1985. Terms of Office shall be two-year terms except the first year shall have two one-year term which shall be determined by lot. Any position thereafter shall be two-year terms and shall solicit recommendation for a replacement from the general membership. The officers shall be elected by the membership at large, including those vacancies by reason of death or otherwise stated in Article II, Section 2, and shall be filled by appointment by the Chairperson for the unexpired portion of the term. Notification of the appointment will be given by the Chairperson of the Executive Committee or so designated person to the new member.

The names of the person constituting the original Officers or Executive Committee are:

NAME	OFFICE	TERM
Carolyn Rusche	Chairperson	2–year
Bridgett Smith	Vice Chairperson	1–year
Diane Weeks	Secretary	1–year
Terry Daniels	Treasurer	2–year

Section 3. Regular Meetings. VOICES FOR CHILDREN shall hold regular meetings the 2nd Thursday of each month at 7:00 p.m.

Section 4. Special Meetings. Special meetings may be called by the Chairperson, and any other officer or by two organization members at large.

Section 5. Notice of Special Meetings. Notice of any special meetings shall be given by telephone, written notice, delivered personnally or mailed to each member at his/her address. Two day prior notice must be given.

Section 6. Quorum. The regularly scheduled monthly meeting will not need a quorum, but special meetings will require a quorum of five.

Section 7. Vacancies. Any vacancy occuring in the officers shall be filled by the affirmative vote of majority of the membership. An Officer shall be appointed for the unexpired term of his/her predecessor in office. Notification of the appointment shall be made by the Chairperson.

ARTICLE II - OFFICERS

Section 1. Number. VOICES FOR CHILDREN at its' initial meeting shall elect from within its own membership at a chairperson, vice chairperson, secretary, and treasurer. Officers shall be elected for a two-year term at the June election, other officers if deemed necessary shall be elected by the membership.

Section 2. Disqualification. Any member or any officer shall be removed by the membership whenever in its judgement the best interests of the organizations would not be served for the following non-complaint reasons:

Absenteeism — Failure to attend three consecutive regular meetings without notification to the officers.

Individual Conduct — Every member will be expected to conduct him/herself in such a manner as to be a credit to the VOICES FOR CHILDREN organization.

Public Statement — Individual members shall not speak on behalf of VOICES FOR CHILDREN without the prior approval of the membership.

Termination — A member may voluntarily terminate their position by submitting a written statement of resignation. Involuntary termination may be exercised and concluded by the membership for whatever reason they deem necessary.

Section 3. Chairperson. The Chairperson shall preside at all meetings and have the usual duties of a chairperson and shall vote only in case of a tie vote. Notification of removal and vacancies shall be by the chairperson or so designated person of the organization.

Section 4. Vice-Chairperson. The Vice-Chairperson in the absence of the chairperson shall perform the duties of the chairperson. When so acting, shall have all the powers of and be subject to all the restrictions of the chairperson.

Section 5. Secretary. The Secretary shall record and maintain a full report of all proceedings of each meeting of VOICES FOR CHILDREN. The Secretary shall perform all duties incident to the office of secretary and such other duties assigned by the membership.

Section 6. Treasurer. The treasurer shall give a financial report at all regular meetings.

ARTICLE III – MOTIONS

Section 1. Motions Log. VOICES FOR CHILDREN shall keep a log of all motions passed; including the date passed and subject. The motions log may be maintained by the Secretary or an appointed member of the organization.

ARTICLE IV – AMENDMENTS

Section 1. Amendment. Amendment of these by-laws shall become effective upon adoption of a resolution approved in writing by members of VOICES FOR CHILDREN. Written amendments shall officially be mailed to each member at least two weeks prior to the next scheduled meeting, along with a copy of the current Constitution and By-Laws.

ARTICLE V – RATIFICATION

Section 1. Ratification of Constitution and By-Laws of VOICES FOR CHILDREN Organization.

The members of VOICES FOR CHILDREN Organization have adopted this Constitution and By-Laws by vote at the meeting on the 6 day of June, 1985.

Approved by: Carolyn Rusche
Chairperson

Diane Detrit-Hicks
Secretary

Date: June 6, 1985

Senator DENTON. Our first witness is Lois Haight Herrington, Assistant Attorney General, Office of Justice Assistance, U.S. Department of Justice. I will ask her to come forward and be seated. I welcome you, and would state that your complete written statement will be placed in the record, and because of time restraints request that you limit your oral remarks to 5 minutes.

STATEMENT OF HON. LOIS HAIGHT HERRINGTON, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE

Ms. HERRINGTON. Thank you very much, Mr. Chairman. I am very pleased to be here. Senator Denton, we certainly appreciate your support and the support of Senator DeConcini on this bill. I would like to introduce Roger Adams who is with me from the Criminal Division should there be some questions later to which, we both might be able to respond.

I am pleased to testify before you today on S. 1818, a bill to prevent the sexual molestation of children in Indian country. The Department of Justice strongly supports enactment of this legislation.

U.S. attorneys have reported a troubling increase in incidents of child sexual molestation on Indian reservations which cannot be dealt with effectively under current statutes and we believe the Federal Government must take steps to try to resolve this pervasive problem. We have an obligation to provide children in Indian country the same protections as those enjoyed by non-Indian children.

S. 1818 would accomplish that objective by filling a significant void in the present Major Crimes Act, 18 U.S.C. 1153, with regard to sexual conduct directed at children in Indian country. Although the Major Crimes Act was recently amended to add the offense of involuntary sodomy and also covers the crimes of rape and carnal knowledge of a female under the age of 16, a gap exists with respect to serious acts of sexual abuse of minors, both male and female, that do not involve carnal knowledge.

The act lacks adequate coverage of nonforcible sexual conduct involving children. We therefore endorse the thrust of S. 1818 to add an offense of "felonious sexual molestation of a minor" to the list of predicates in the Major Crimes Act, as well as the bill's approach of incorporating the felony sexual child molestation law of the State in which the offense occurred as the method of proscribing these crimes.

The description of the offense as "felonious sexual molestation of a minor" is meant to be generic in nature so that it would not matter whether the particular State designated its offense as "sexual molestation" or by some other title such as "indecent liberties" or "sexual contact" with children.

S. 1818 will ensure an equality of punishment for this type of offense irrespective of whether the defendant and the victim are Indians or non-Indians.

In our judgment the enactment of S. 1818 will help protect child victims of sexual abuse in Indian country through deterrence and punishment of would-be and actual offenders. We urge Congress to

give S. 1818 prompt and favorable consideration. Thank you very much, Mr. Chairman.

Senator DENTON. Thank you. I have only one question. We may have others to submit later, in writing, and ask that if we do, you respond to them.

When the Major Crimes Act was amended in 1984 we included involuntary sodomy believing that the inclusion of such an offense would cover all forms of serious sexual offenses against children. That thesis has been proved wrong and so the need for S. 1818 arose, and is readily apparent.

Do you see any areas of serious sexual offenses against children which would not be covered by the way we intend to amend the Major Crimes Act?

Ms. HERRINGTON. No, sir. I do not. This seems to be inclusive.

Senator DENTON. Well, I want to thank you both very much and if anything does occur to you by which we might improve this bill, please let us know.

Ms. HERRINGTON. All right. Thank you very much.

Senator DENTON. I understand that Suzan Shown Harjo, the executive director of the National Congress of American Indians has arrived, and I will ask her to come forward. I want to welcome you to today's hearing and your full written statement will be placed in the record.

Would you limit yourself, please, to 5 minutes in summarizing your testimony this morning.

STATEMENT OF SUZAN SHOWN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. HARJO. Thank you, Senator, and I really appreciate, on behalf of the membership of the National Congress of American Indians, your taking this step.

We feel this is a vital area that needs to be addressed, and we are pleased that you are addressing it, and I hope that the committee will act expeditiously to enact S. 1818. We strongly support this amendment to the Major Crimes Act. We do ask, however, that the committee do two things. To also take steps to amend the Indian Civil Rights Act, 25 U.S.C. 1302(7), to enlarge the penalty and punishment power of tribal courts to imprison for a term of 1 year, or a fine of $1,000, or both.

As you have pointed out, and as the previous witness pointed out, tribal courts do not have the authority to impose penalties over 6 months.

As a general matter we would hope that this prohibition on the tribal courts' punishing authority could be removed, but particularly in this matter, we would also like to see this amendment to the Indian Civil Rights Act, along with the amendment to the Major Crimes Act. Additionally, we would like to see a provision on S. 1818 that assures that there is no prospective prohibition regarding tribal court jurisdiction in this and other matters. You are very well aware of the need that we have an Indian Country as we have a need, nationally, for this legislation. Indian and native child sexual abuse occurs at about the same percentage, we understand from our limited information, as it does nationally. So we are not

concerned about the incidence of it vis-a-vis the national average, although we are concerned about both.

It is the increase, reported by the Bureau of Indian Affairs, that we are very troubled by, and something has to be done now and done quickly.

With our rising unemployment that does not look like its tide has been stemmed, we feel that there will be an even greater increase in this particular matter, which is repugnant to all of us. We thank you for doing something about it.

Senator DENTON. Well, thank you, Miss Harjo. Respecting your urging us to amend the Indian Civil Rights Act in the manner you described, we will certainly consider that action and consult with Senator Andrews who is the chairman of the Indian Affairs Committee, as you know, and with the Department of Justice, and see what can be done.

Ms. HARJO. Thank you.

Senator DENTON. I have only one question for you, too, Miss Harjo. Out of some 12,000 Indians in the State of Alabama, it is estimated that close to 2,500 are children.

Can you estimate the total number of Indian children, nationwide, who might be further protected by this bill?

Ms. HARJO. As I understand it, our average population, our median age is 12. We do not have many elders and we have a great deal of infant mortality throughout Indian country. I do not know how many children would be affected, but I would say that the greater percentage of our people are in the youth category and below, that being 15 to 25, and then 1 to 15.

Senator DENTON. This bill also addressed Indians who might molest non-Indian children on Indian lands. Is there any way to estimate the number of non-Indian children who might be protected?

Ms. HARJO. I do not know the answer to that. I am sorry.

Senator DENTON. Senator DeConcini has sent his regrets. I will include his entire statement on S. 1818 in the record, and I know that he intended to be here and that something unforeseen came up to prohibit his attendance and it was unavoidable.

As I mentioned to the other witness, Miss Harjo, we might have further written questions for you, and if you can come up with any other ways in which we might amend, which would be pursuant to your and our objective, we would like to know about it.

Ms. HARJO. Thank you. We will provide specific written draft language.

Senator DENTON. Thank you very much, Miss Harjo.

[Prepared statement and response to question follows:]

STATEMENT OF SUSAN SHOWN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, ON S. 1818, AN AMENDMENT TO THE MAJOR CRIMES ACT TO ADD THE CRIME OF CHILD SEXUAL MOLESTATION, BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, NOVEMBER 19, 1985, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, on behalf of the Indian and Native governmental and individual members of the National Congress of American Indians (NCAI), I thank you for providing this opportunity for us to express our strong support for enactment of S. 1818.

The NCAI is the oldest and largest national Indian organization, with standing membership resolutions over its 41-year history from more than 75% of the Indian and Native governments. At our recent 42nd Annual NCAI Convention in Tulsa, Oklahoma, October 7 - 11, there were 126 Indian and Native governments officially represented by duly-authorized delegates with voting privileges, along with more than 1,000 Indian and Native individual voters.

Our Convention adopted the appended resolution, which was included in the Congressional Record of November 1 (at S14688 and S14689) by Senators Denton and DeConcini when introducing S. 1818. The bill now has eleven co-sponsors. We are most appreciative of this bi-partisan support.

S. 1818 would allow prosecution in federal court, using state statutes, for non-forcible sexual conduct involving Indian and Native children. At present, tribal courts can administer punishment for up to six months imprisonment, a punishment we consider to be too lenient for the heinous crime of sexual abuse of children. We urge the Committee also to amend the Indian Civil Rights Act, 25 USC 1302(7), to enlarge the penalty and punishment power of tribal courts to imprisonment for a term of one year or a fine of $1,000, or both. There have been instances where meritorious cases have not been investigated and brought by the Federal Bureau of Investigation and the U.S. Attorneys, and we wish for tribal courts to have punishing authority more equal to this crime, especially in those instances where the federal entities are unresponsive.

We further urge the Committee to add a proviso to S. 1818 to the effect that nothing in this act shall be construed to preclude tribal jurisdiction over these offenses. It is unresolved as to whether tribal courts can hear Major Crimes, although we believe they have this authority, and we wish to assure that this amendment to the Major Crimes Act is not prohibitive prospectively. Tribal courts clearly can hear lesser included offenses and, for example, can sentence offenders to multi-year counselling and can impose punishment suited to the community of interest, which many experts in this field view as the more productive determent and rehabilitation course.

The Bureau of Indian Affairs reports an increase of nearly 25% in Indian child sexual abuse from 1983 to 1984, up from 685 reported cases in 1983 to 932 reported cases in 1984. Evidence of the increasing public recognition of the rising incidence of sexual abuse of Indian and Native children is to be found in the escalating number of local and national forums on the prevention and recognition of sexual abuse. The National Indian Health Board has included as an important part of its agenda for the past several years the issues surrounding sexual abuse of children. This issue is considered to be such a high priority for the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, for example,

that the Tribes' representatives have travelled to Washington for this hearing to present written testimony, even though they are not included on the witness schedule.

While the authors of this legislation are to be congratulated for their concern and for the introduction of S. 1818, we hope that all understand that more stringent punishment of sexual abusers will not end this type of activity. These crimes are rooted in myriad complex social circumstances which have led to disintegration of many Indian and Native families, to cultural alienation, to levels of Indian unemployment exceeding 55% nationally and exceeding 90% on some reservations, to the alarmingly high rate of suicides among Indian youth which is 2.3 times that of the national average and to the high rate of alcoholism among Indian and Native people.

Indian and Native children are a vulnerable population with regard to sexual abuse, which runs counter to all tribal mores, but which is found in modern conditions. Factors which contribute to a child's potential as a victim of abuse include dysfunctional families, alcoholic parents, violence in the home, low self-esteem. The 1980 Census reports that Indian and Native people have an alcoholism rate 451% higher than the non-Indian population.

The Joint Economic Committee has estimated that a 1% increase in the national unemployment rate results in a 1.9% increase in deaths from cirrhosis of the liver, a 4.1% increase in suicides, a 5.7% increase in homicides and a 4% increase in state prison admissions. That Committee did not project increases in child abuse based on increases in unemployment, but it is reasonable to expect that an increase does result. The national unemployment rate dropped 27% from 1982 to 1985, but the Indian unemployment rate rose 7% during the same period, according to Department of Labor and Bureau of Indian Affairs statistics. This, in our opinion, has contributed to the increase in sexual abuse among Indian and Native children. If, as the National American Indian Court Judges Association reports, sexual abuse of Indian children occurs at about the same rate as sexual abuse of non-Indian children, this would mean that one out of four girls and one out of six to eight boys are sexually molested by age 18, with 85% of the identified children being abused on a reoccurring basis by someone known to them.

Passage of S. 1818, with the recommended amendment and proviso, would protect some children by providing more appropriate punishment for sexual abusers and would contribute to the public discussion and community involvement in the prevention of sexual abuse of children. We urge its swift enactment to help stem the tide of the increasing incidents of Indian and Native child sexual abuse. We thank the Committee for its expeditious action.

By Mr. DENTON (for himself and Mr. DECONCINI):

S. 1818. A bill to prevent the sexual molestation of children in Indian country; to the Committee on the Judiciary.

PREVENTING THE SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY

Mr. DENTON. Mr. President, I rise today, along with my distinguished colleague from Arizona, Senator DECONCINI, to introduce a bill to prevent the sexual molestation of children in Indian country.

Specifically, the bill is designed to fill a gap in the Major Crimes Act, 18 U.S.C. 1153, with regard to serious sexual conduct directed at children. Currently, section 1153 vests in the crimes of rape, involuntary sodomy, and carnal knowledge of a female under the age of 16, when these crimes are committed by an Indian in Indian country. Although recently amended by Public Law 98-473 to add the offense of involuntary sodomy, the statute still lacks adequate coverage of nonforcible sexual conduct involving children.

Serious offenses that are not covered include various types of sexual contact with male or female children other than carnal knowledge. Many U.S. attorneys have reported a troubling increase in incidents on Indian reservations. Amendment of the Major Crimes Act is necessary to permit effective enforcement, since without the amendment these serious offenses, which nearly all States treat as felonies, are prosecutable only in a tribal court, which may administer punishment only up to 6 months' imprisonment according to 25 U.S.C. 1302(7).

Moreover, amendment of the Major Crimes Act is necessary to increase the protection for children on Indian reservations and to equalize the punishment for such crimes between Indian and non-Indian offenders. A non-Indian who commits the crime of sexual molestation of a minor in Indian country is punishable under the far more stringent provisions of State law, either in State court when the victim is a non-Indian, or in Federal court by assimilation under 18 U.S.C. 1152 when the victim is an Indian.

The bill adds the offense of "felonious sexual molestation of a minor" to section 1153, thus permitting State law to be used in Federal court to prosecute Indian as well as non-Indian sexual molesters of children in Indian country. The description of the offense as "sexual molestation of a minor" is, like the recent addition of "involuntary sodomy," meant to be generic in nature. Thus, it would not matter whether the particular State designated its offense as "sexual molestation" or by some other title such as "indecent liberties" or "sexual contact" with children.

So long as the State has on its books a felony offense that proscribes the conduct of nonforcible sexual abuse of the person of a minor, size as defined by State law, that offense will be incorporated into section 1153. The offense must, however, be a felony. This qualification ensures that, as with all other offenses in section 1153, only the major varieties of the offenses will be subject to Federal jurisdiction, maintaining exclusive tribal jurisdiction over the lesser offenses.

Mr. President, as the U.S. Supreme Court noted in the famous case of New York versus *Ferber*, "the prevention of sexual exploitation and abuse of children constitutes a Government objective of surpassing importance." It is with that objective in mind that Senator DECONCINI and I introduce this bill to prevent the sexual molestation of children in Indian country and to give these children the same protections enjoyed by non-Indian children.

The bill has the strong endorsement by the National Congress of American Indians, as indicated by a resolution adopted at their recent annual meeting. The bill is also endorsed by the Alabama Indian Affairs Commission and the U.S. Department of Justice.

I ask unanimous consent that the text of the bill and the resolution by the National Congress of American Indians be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 1818

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1153 of title 18, United States Code, is amended by inserting "felonious sexual molestation of a minor," after "involuntary sodomy," each place it appears.

RESOLUTION NO. T-85-85/E

NATIONAL CONGRESS OF AMERICAN INDIANS

A resolution urging Congress to amend the Major Crimes Act by adding the crime of child sexual molestation.

Whereas, recognition of Child Sexual Abuse Problems on Indian Reservations and Alaskan Natives is an important initial step in facing and taking steps to resolve this pervasive social problem; and

Whereas, Child Sexual Abuse oftentimes disrupts families and causes serious and permanent psychological damage to Indian children; and

Whereas, Tribal Social Services Offices, Tribal Prosecutor's Offices, and the Bureau of Indian Affairs and Tribal Law Enforcement Offices, must cooperate to fully prosecute persons committing child sexual abuse crimes on Indian Reservations; and

Whereas, at the present time many Tribes do not have specific Child Molestation laws in their criminal codes and if an Indian is convicted of child sexual molestation, the maximum penalty available in Tribal Courts is six months imprisonment, a five hundred dollar fine, or both; and

Whereas, an Indian committing a child molestation crime which is not considered Rape, Assault with Intent to Commit Rape, or Incest may not be charged with a federal Major Crime pursuant to 18 U.S.C. 1153; and

Whereas, it is necessary and crucial to effective law enforcement on Indian Reservations and to protect the mental health and physical well-being of Indian to have the United States Congress enact into law as part of the Major Crimes Act Molestation law,

Now therefore be it resolved:

1. The National Congress of American Indians hereby urges the United States Congress to enact into law an amendment to the Major Crimes Act, 18 U.S.C. 1153, making child molestation by an Indian to an Indian child occurring on an Indian Reservation, a federal crime punishable in the federal courts and providing the federal courts the power to punish Indian offenders.

2. The National Congress of American Indians hereby urges the United States Congress to enact into law an amendment to the Indian Civil Rights Act, 25 U.S.C. § 1302(7), enlarging the penalty and punishment power of tribal courts to imprisonment for a term of one year or a fine of $1,000, or both.

3. The National Congress of American Indians hereby authorizes its duly elected officers to take all appropriate steps to urge Indian Tribes, Indian organizations, the Bureau of Indian Affairs, the Department of Justice, and the United States Congress to support amending the Major Crimes Act to include the crime of Child Molestation.

NATIONAL CONGRESS OF AMERICAN INDIANS

Est. 1944

December 11, 1985

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Alturas Band of Luiseno

SOUTHEASTERN AREA
Billy Cypress
Miccosukee Tribe

Senator Jeremiah Denton
Chairman
Judiciary Subcommittee on Security and Terrorism
198 Russell Building
Washington, D.C. 20510

Dear Senator Denton:

Thank you for your introduction of S. 1818 and for giving the National Congress of American Indians the opportunity to testify regarding the need to change the law with respect to sexual assault of Indian children.

In response to your question of how many childen would be covered by this legislation, an estimate is 375,000. We have arrived at this approximation from knowing that there are 1.5 million Indian people in the United States and that half of them, or 750,000,live on reservations. The bill applies to Indian reservations only. Since the median age of Indian people is 18, half of the 750,000 people on reservations, or 375,000, are under 18 and hence covered by the legislation.

I hope this information is helpful.

Sincerely,

Suzan Shown Harjo
Executive Director

Senator DENTON. This hearing stands adjourned.

[Whereupon, at 9:52 a.m., the hearing was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF NANCY M. TUTHILL, DIRECTOR OF THE AMERICAN INDIAN LAW CENTER, INC. OF ALBUQUERQUE, NEW MEXICO, BEFORE THE SENATE JUDICIARY COMMITTEE ON S. 1818, A BILL TO PREVENT THE SEXUAL MOLESTATION OF CHILDREN IN INDIAN COUNTRY

December 9, 1985

Mr. Chairman, I am pleased to provide this testimony on S. 1818, a Bill to Prevent the Sexual Molestation of Children in Indian Country. The American Indian Law Center strongly supports enactment of legislation which will provide federal jurisdiction to prosecute perpetrators of child sexual abuse in Indian country.

The American Indian Law Center is the oldest Indian legal institution in the United States. It was established in 1967 to encourage the development of political, administrative, and leadership capabilities of tribal governments. An Indian-controlled, non-profit corporation, the Law Center provides broad-based services in legal research, policy analysis, and technical assistance to American Indian tribes, organizations and individuals, as well as governmental agencies at all levels. Since 1971, the Law Center has specialized in issues related to Indian children and for nearly a decade, we have focused on child abuse and neglect in Indian country.

In addition to children's issues, we have also spent a number of years tackling the problems surrounding the criminal justice system in Indian country. For example, as staff to the Commission on State-Tribal Relations, we sponsored the National Conference on the Indian Criminal Justice System in Denver, Colorado, in September, 1985. At this conference, the participants reinforced our concerns regarding problems with investigation and prosecution of crimes in Indian country, e.g., child sexual abuse. The problems with investigation and prosecution of child sexual abuse are similar to the problems

existing throughout the Indian criminal justice system and cross cut several disciplines, and federal and tribal agencies.

I firmly believe that a crisis may erupt in Indian country if the federal government does not initiate legislative and administrative changes to the current method of identifying and prosecuting perpetrators of child sexual abuse. From my organization's work, it is clear that there is a serious problem in prosecuting the perpetrators due to jurisdictional impediments in federal law, as well as in identification of abused children, reporting requirements, investigation procedures and treatment.

Tribes throughout the country are confronted with a host of jurisdictional and enforcement problems. For example, in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), the Supreme Court ruled that Indian tribes have no jurisdiction over non-Indians. Therefore, tribes are powerless to prosecute non-Indian perpetrators who physically or sexually abuse Indian children on reservations. While tribes can still entertain a civil cause of action against a non-Indian perpetrator for child physical or sexual abuse, the cause of action is in tort, the remedy is in damages and the collection of damages is very difficult.

The problems are not limited to non-Indian perpetrators, however. The prosecution of child abuse cases involving Indian perpetrators and Indian child victims in tribal court is also fraught with barriers. While the tribal courts have both criminal and civil jurisdiction over Indians, the criminal penalties available are limited by the Indian Civil Rights Act of 1968 to a fine of up to $500 and/or six months incarceration. However,the tribal court's power to sentence an Indian perpetrator, even up to six months incarceration, is meaningless and serves only to punctuate the injustice visited upon the child because, in reality and practice, many tribes do not have the facilities nor adequate funds to incarcerate a convicted perpetrator.

The alternative to prosecuting Indian perpetrators in tribal forums, referring the case to the U.S. Attorney's office

for federal prosecution, currently presents yet another barrier: federal jurisdiction is grounded in the Major Crimes Act. The federal courts have jurisdiction in Indian perpetrator-Indian victim child sexual abuse cases only when the perpetrator has allegedly committed one of the crimes specifically enumerated in the Act. This limited jurisdiction is further stunted by proof and evidentiary problems, and the discretionary power of the U.S. Attorney's office to decline prosecution of the case. S. 1818 would ease the situation considerably by creating federal jurisdiction over child sexual abuse of Indian children.

This legislation could beneficially effect large numbers of Indian children. According to the 1980 Census, there are 119,313 Indian children under the age of 17 residing on reservations. (See Table 55, General Population characteristics.) This number does not include Indian children from approximately 30 tribes in Oklahoma who are omitted from the "reservation" category of the Census classification structure. Between 20,000 and 40,000 Indian children in Oklahoma should be included in the aggragate total. Therefore, S. 1818 could impact upon approximately 160,000 Indian children under the age of 17.

S. 1818 is an important first step towards solving the problem. It is, however, only the first step because it only improves the last stage in a flawed process. I view the process as including five stages which involve five disciplines and their respective tribal or federal service providers. These five stages are: recognition or identification, reporting, investigation, treatment and prosecution. The five disciplines and their service providers are: (1) Education - tribe, Bureau of Indian Affairs (BIA), Headstart, school boards; (2) Social Service - tribe, BIA, Indian Health Service (IHS); (3) Health Care - tribe, IHS; (4) Law Enforcement - tribe, BIA, Federal Bureau of Investigation (FBI); and (5) Courts/Prosecutors - tribe, U.S. Attorney's office, federal district court. The traditional providers of child welfare services on reservations have been the BIA and IHS, and within the last decade, tribal governments have delivered these services themselves under the

Indian Self-Determination and Education Assistance Act. A tribe may also provide services through one or more of the above disciplines under discretionary and categorical funding from the Office of Human Development Services (OHDS) of the U.S. Department of Health and Human Services (HHS), as well as the U.S. Department of Justice (DOJ).

While prosecution is the last stage, the first stage, recognition or identification, is flawed by lack of uniformity among service providers, such as IHS, BIA, Headstart, and the tribe, on how to recognize the characteristics of child abuse. The second stage, reporting requirements, is likewise flawed by a lack of uniformity among the same service providers on how to report suspected abuse and on those who are required to report. Headstart is the only federal program which has historially imposed mandatory reporting to tribal courts. The third stage, investigation, suffers from lack of uniformity on the proper procedures of investigation and the gathering of medical and forensic evidence in suspected cases of child sexual abuse. Finally, in stage four, treatment, there is no clear understanding or agreement among the service providers on who provides medical and psychiatric treatment to both the perpetrator and the victim.

In closing, while this legislation will resolve a part of the total problem, the final solution depends upon the cooperative efforts of the Departments of the Interior, Justice and Health and Human Services to address the remaining problems I have cited. I am pleased to report that these departments have informed me of their interest in exploring the possibility of coordinating policies and procedures. This week I met with the Commissioners of the Administration for Native Americans and the Administration of Children, Youth and Families, both of whom responded positively. I want to express my appreciation for your efforts to alleviate the problem of prosecuting child sexual abuse offenders in Indian country. Anything you can do to assist these federal agencies in promulgating uniform policies and procedures would help to prevent a crisis from erupting in Indian country.

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